

STATE OF NEW YORK

[DG1]DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
SHELLY OURIAN : DETERMINATION
 : DTA NO. 830030
for Redetermination of a Deficiency or for Refund of :
New York State Personal Income Tax under Article 22 :
of the Tax Law for the Year 2019. :

Petitioner, Shelly Ourian, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2019.

A videoconferencing hearing via CISCO Webex was held before Barbara J. Russo, Administrative Law Judge, on May 24, 2022, at 10:30 a.m. and continued on September 22, 2022 at 10:30 a.m., with the final brief to be submitted by February 10, 2023, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Christopher O'Brien, Esq., of counsel).

ISSUE

Whether petitioner has met her burden of proving that she is entitled to a refund for additional tax withheld.

FINDINGS OF FACT

1. Petitioner, Shelly Ourian, filed a New York resident personal income tax return (form IT-201) for the year 2019 (2019 return), claiming a refund in the amount of \$580.00. On her [DG2] 2019 return, petitioner reported wages, salaries and tips in the amount of \$21,964.00, ordinary dividends of \$12.00, taxable social security benefits of \$3,176.00, and federal adjusted

gross income of \$25,152.00. Petitioner reported a New York subtraction for social security benefits of \$3,176.00 and reported New York State adjusted gross income of \$21,976.00. Petitioner claimed a standard deduction of \$8,000.00 and reported taxable income of \$13,976.00. Petitioner calculated New York State tax on line 38 of the 2019 return in the amount of \$604.00. From this amount, petitioner deducted \$20.00 for a New York State household credit, and reported total New York State taxes in the amount of \$584.00. On line 72 of the 2019 return, petitioner claimed New York State tax withheld of \$1,164.00, and requested a refund of \$580.00.

2. Attached to petitioner's 2019 return was a wage and tax statement, form W-2, and summary of W-2 statement. The form W-2 and summary of W-2 statement show that petitioner received wages, tips, or other compensation from Nassau Suffolk Services in the amount of \$21,964.00 and New York State tax withheld in the amount of \$582.00.

3. The Division of Taxation (Division) reviewed petitioner's 2019 return and disallowed her claim for refund on the basis that the amount of tax withheld was only \$582.00, as shown on the form W-2. As the amount of tax withheld did not exceed the amount of total tax reported on the 2019 return, the Division determined that petitioner was not entitled to a refund.

4. The Division issued a notice of disallowance, dated July 9, 2020, disallowing petitioner's claimed refund of \$580.00 for the year 2019.

5. During the hearing, petitioner contended that she is entitled to a refund for taxes withheld. She was given additional time after the hearing to submit a form W-2, wage and tax statement, showing that additional taxes were withheld for 2019, beyond the \$582.00 withholdings shown on the form W-2 attached to the 2019 return, which was submitted into the record by the Division. Within the time allowed, petitioner submitted the same form W-2 showing that \$582.00 was withheld by Nassau Suffolk Services. Petitioner did not present any

evidence showing additional withholdings beyond such amount.

CONCLUSIONS OF LAW

A. Petitioner bears the burden of proof in this matter and must show by clear and convincing evidence that the Division's disallowance of her claimed refund was erroneous (*see* Tax Law § 689 [e]; *see also Matter of Leogrande v Tax Appeals Trib.*, 187 AD2d 768 [3d Dept 1992], *lv denied* 81 NY2d 704 [1993]).

Tax Law § 682 provides that the amount of tax which a return shows to be due is deemed to be assessed on the date of filing of the return. Petitioner's tax was self-assessed upon the filing of her 2019 return, which reported taxable income of \$13,976.00, and total New York State taxes in the amount of \$584.00. From this amount, petitioner subtracted the amount she claimed was New York State tax withheld of \$1,164.00 and requested a refund of \$580.00. The only issue to be addressed herein is the correct amount of New York State tax withheld.

B. Tax Law § 673 provides as follows:

“Credit for tax withheld. Wages upon which tax is required to be withheld shall be taxable under this article as if no withholding were required, but any amount of tax actually deducted and withheld under this article in any calendar year shall be deemed to have been paid to the tax commission on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the tax commission.”

In this matter, petitioner bears the burden of proving that additional tax was withheld by her employer, beyond the \$582.00 reflected in the form W-2 entered into the record.

Petitioner's mere assertion that there was additional withholding by her employer for which she has not been given credit is insufficient absent additional proof. Petitioner was given additional time after the hearing to produce documentation showing additional amounts withheld, but the only evidence produced by petitioner was the same form W-2 entered into the record by the

Division, showing that only \$582.00 was withheld by petitioner's employer in 2019. As such, petitioner has failed to meet her burden of proving that the Division's disallowance of her claimed refund was erroneous.

C. The petition of Shelly Ourian is denied and the notice of disallowance, dated July 9, 2020, is sustained.

DATED: Albany, New York
June 15, 2023

/s/ Barbara J. Russo
ADMINISTRATIVE LAW JUDGE